

Scott A. Galati
GALATI & BLEK, LLP
555 Capitol Mall Avenue
Suite 600
Sacramento, CA 95814
(916) 441-6575

STATE OF CALIFORNIA

Energy Resources
Conservation and Development Commission

In the Matter of:

Application for Certification for the
BLYTHE ENERGY PROJECT, PHASE
II

DOCKET NO. 02 AFC-1

**CAITHNESS BLYTHE II, LLC'S
COMMENTS ON PRESIDING
MEMBER'S PROPOSED DECISION**

Caithness Blythe II, LLC (CBII) hereby files its Comments on the Presiding Member's Proposed Decision (PMPD) as directed by the Committee Order dated October 21, 2005. CBII wishes to thank the Committee for preparing the PMPD so quickly after evidentiary hearings and believes the Committee did an outstanding job in capturing the agreements between the parties. CBII agrees with the conclusions, findings and proposed Conditions of Certification contained in the PMPD except as outlined below.

PROJECT DESCRIPTION

Page 6, Second to Last Bullet – The Manufacturer should be changed from General Electric to Siemens.

Page 82, CUL-6 – The version of Proposed Condition of Certification **CUL-6** needs minor modifications in order to make it consistent with the specific agreement between

Staff and CBII. CBII submitted a version of **CUL-6** in its testimony that encompassed the agreement reached at the PreHearing Conference. Staff did not object to CBII's Cultural Resources Testimony and the matter was submitted on Declaration, CBII requests the PMPD be modified as follows.

CUL-6 The project owner shall ensure that the CRS, alternate CRS, or CRMs shall monitor ground disturbance of previously undisturbed sediments full time in the vicinity of the project site, linears and ground disturbance at laydown areas or other ancillary areas to ensure there are no impacts to undiscovered resources and to ensure that known resources are not impacted in an unanticipated manner. In the event the ~~CRS~~ **project owner** determines that full-time monitoring is not necessary in certain locations, a letter or email with a detailed justification for the decision to reduce the level of monitoring shall be provided to the CPM for review and approval and to Western prior to any reduction in monitoring.

Page 84 and 85, CUL-9 – The version of Proposed Condition of Certification **CUL-9** needs minor modifications in order to make it consistent with the specific agreement between Staff and CBII. CBII submitted a version of **CUL-9** in its testimony that encompassed the agreement reached at the PreHearing Conference. Staff did not object to CBII's Cultural Resources Testimony and the matter was submitted on Declaration, CBII requests the PMPD be modified as follows.

CUL-9 The project owner shall invite tribal leaders, elders and/or representatives of the Salt River Pima-Maricopa Indian Community, the Fort Yuma Quechan Tribe, the Chemehuevi Indian Tribe and the Fort Mojave Indian Tribe to bless the project area and conduct other appropriate ceremonies. As recommended in "Blythe Energy Projects American Indian Ethnographic Assessment Study, Final Report," participants shall be provided with adequate compensation in the form of a consulting fee and reimbursement for travel, meal and lodging costs, if lodging is necessary. Members of the Tukic-speaking Cahuilla groups, Yuman-speaking Cocopah, Kumeyaay, Pai, and Yavapai tribes, the Twenty-nine Palms Band of Mission Indians (Chemehuevi) and Maricopa members of the Gila River and Ak-Chin Pima-Maricopa Indian Community shall also be notified of the site visit and invited to attend and conduct appropriate ceremonies. The project owner shall also invite Western's Historic Preservation Officer, the CPM and City of Blythe officials to the blessing. The date(s) for the

blessing and ceremonies shall be ~~within 30 days~~ **prior to** of certification **ground disturbing activities** or at a time mutually convenient to the tribes, project owner, Western's Historic Preservation Officer, the CPM and the City of Blythe officials.

Page 95, PAL-5 – The word “minerals” third line of the Proposed Condition of Certification **PAL-5** should be changed to “materials”.

Page 114, HAZ-11 – The version of Proposed Condition of Certification **HAZ-11** needs to be replaced with the following in order to reflect the agreements between Staff and CBI reached at the PreHearing Conference. These modifications were included CBII's Testimony on Hazardous Materials. Staff did not object to the version contained in CBII Testimony and the matter was submitted on Declaration. CBII requests the Committee replace the version of **HAZ-11** in the PMPD with the following.

HAZ-11 The project owner shall install an ammonia sensor on the discharge from the scrubber on the anhydrous ammonia refrigeration unit containment building that can be remotely read in the power plant control room and remotely read by a laptop computer operated by power plant personnel, the Blythe Fire Department and the Riverside County Fire Department. This sensor and all other sensors located inside the containment building shall be able to detect ammonia concentrations within a range of at least 10 to 20,000 ppm and shall be reported to the power plant control room on a real-time recordable basis. Additionally, the project owner shall:

1. Perform a process safety evaluation of hazards associated with the chilling system and provide anhydrous ammonia release prevention features for the chilling system equipment and containment structure to enhance the safety of operators and emergency response personnel;
2. require that any routine maintenance or repair work on the anhydrous ammonia refrigeration unit is conducted only during normal daytime work hours;
3. require that maintenance or repair on any filter train be conducted only under lockout/tagout safety procedures;

4. provide handheld ammonia vapor detectors and direct that they be used by workers whenever entering the ammonia refrigeration unit containment building; and
5. conduct joint training and exercises at least annually with the Blythe Fire Department, the Riverside County Fire Department, the Riverside County Hazardous Materials Response Team, the Blythe Police Department, and site staff.

Verification: At least sixty (60) days prior to delivery of anhydrous ammonia to the facility, the project owner shall provide the final design drawings and specification for the above systems, the results and recommendations of the process safety evaluation of hazards associated with the chilling system, and an agreement with the Blythe Fire Department, the Riverside County Fire Department, the Riverside County Hazardous Materials Response Team, and the Blythe Police Department to conduct joint training and exercises with site personnel at least annually to the CPM for review and approval.

Page 165, SOCIO-2 – CBII proposes the following Verification to the Proposed Condition of Certification **SOCIO-2**.

Verification: The project owner shall submit the plan to the CPM for review and approval at least six months prior to commercial operation. The plan shall contain, at a minimum, the specific activities to be implemented and a description of how each activity will be funded.

Page 239, WATER QUALITY-5 – CBII requests that the Verification for the Proposed Condition of Certification **WATER QUALITY-5** be modified as follows to clarify that the submittal of the final design of the Zero Liquid Discharge (ZLD) system be submitted to the CPM prior to construction of the ZLD as opposed to prior to construction of the overall project.

Verification: Sixty (60) days prior to the start of construction ***of the Zero Liquid Discharge (ZLD) system***, the project owner shall submit to the CPM the final design of the Zero Liquid Discharge system for approval.

Pages 273 and 274, WATER RES – 1 – Proposed Condition of Certification **WATER RES – 1** imposes requirements that the Voluntary Water Conservation Offset Program (WCOP) be submitted for review and comment by several entities including the

Colorado River Board (CRB). As was admitted by Staff at evidentiary hearing, the Colorado River Board has no jurisdiction over the project or its use of groundwater. Therefore, any requirement to submit the Voluntary WCOP to the CRB for review and comment should be deleted. In addition the Condition requires certain requirements be incorporated into the voluntary WCOP including Best Management Practices (BMPs) relating to soil erosion. However, the condition includes BMPs for coarse granular soil. Since the purpose of the BMPs is to prevent wind erosion, it seems unnecessary to implement BMPs for the soil type with the least potential to become airborne. Therefore the requirement should be deleted. CBII also requests that the annual monitoring requirement be modified to clarify that the purpose of monitoring is to demonstrate that the WCOP actual water conservation is equivalent to the water *used* by BEP II and not the amount *proposed*. Therefore, CBII respectfully requests the following modifications to Proposed Condition of Certification **WATER RES – 1**.

WATER RES –1 No later than 6 months after the beginning of site mobilization, the project owner shall provide a Water Conservation Offset Plan (WCOP) for review and comment by the Natural Resources Conservation Service (NRCS), US Bureau of Reclamation (USBR), ~~Colorado River Board (CRB)~~, and the Palo Verde Irrigation District (PVID), and for review and approval by the CPM. The CPM-approved WCOP shall remain in effect for the life of the project, unless superseded by a USBR-approved WCOP following assertion of federal jurisdiction over project groundwater pumping. The Final WCOP shall include the following:

- a) Best Management Practices (BMPs) to prevent significant impacts resulting from soil erosion of the fallowed lands for all soil types ~~including~~ **excluding** coarse granular soil.
- b) Tabulation and corresponding maps of lands and the acreages proposed for fallowing and documentation to verify that they have been irrigated during at least 3 of the 5 most recent years.
- c) An estimate of the water required and the methods planned to measure water use as needed to prevent soil erosion of fallowed agricultural lands, i.e., water used by a cover crop, etc., and the proposed means to include such use in the accounting method of actual water conserved.
- d) Demonstration in the water conservation accounting method that BEP II will not be credited with other independent water conservation activities occurring within PVID's service area for which the WCOP has no effect.

- e) Methodology for annual monitoring of the results of the WCOP demonstrating actual water conservation equivalent to BEP II's ~~proposed~~ **actual** annual water use of up to 3,300 acre-feet per year.

Verification: No later than 6 months after the beginning of site mobilization, the project owner shall submit a WCOP to NRCS, USBR, GRB and PVID for review and comment, and to the CPM for review and approval. In the annual compliance report, the project owner shall submit its annual accounting under the WCOP demonstrating the actual conservation of Colorado River water equivalent to BEP II's annual water use, and that erosion impacts from fallowed/retired land remain less than significant.

CONCLUSION

CBII requests the above modifications be made in an Errata to the PMPD. CBII believes that with the above changes the PMPD will accurately reflect the evidentiary record and will provide the necessary clarification to the conditions.

Dated: November 9, 2005

Respectfully submitted,

Scott A. Galati
Counsel to Caithness Blythe II, LLC